

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Pilgrim Communications, Inc.)	File Number: EB-01-DV-044
)	
Licensee of Station KSKE(AM))	NAL/Acct. No. 200332800004
Vail, Colorado)	FRN 0006-1472-19
Facility ID # 16272)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: November 20, 2002

By the District Director, Denver Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find Pilgrim Communications, Inc. ("Pilgrim"), licensee of AM radio station KSKE in Vail, Colorado, apparently liable for a forfeiture in the amount of eleven thousand dollars (\$11,000) for willful and repeated violation of Sections 73.1125(a), 73.1560(a) and 73.1745(a) of the Commission's Rules ("Rules").¹ Specifically, we find Pilgrim apparently liable for failing to maintain the requisite main studio presence at station KSKE, and failing to maintain power levels between 90% and 105% of authorized power levels and exceeding the authorized nighttime power level at station KSKE.

II. BACKGROUND

2. During routine station inspections in the spring and summer of 2001, agents from the Commission's Denver, Colorado, Field Office ("Denver Office") inspected several AM radio stations in Colorado owned and operated by Pilgrim. Several Notices of Violation ("NOVs") were issued to Pilgrim for various rule violations discovered at the stations. In this NAL, we address the most serious violations discovered at station KSKE.

3. Station KSKE is authorized to operate with 5,000 watts of power during daytime hours and 217 watts of power during nighttime hours, on frequency 610 kHz. According to the terms of KSKE's license, the average hours of sunset to sunrise for May 2001, were 8:15 p.m. to 6:00 a.m. Mountain Daylight Time ("MDT"). On May 9, 2001, an agent from the Denver Office monitored the on-air signal of radio station KSKE, and specifically, from 7:30 p.m. to 9:00 p.m. MDT, the agent took numerous field strength measurements at locations near the KSKE transmitter in Minturn Recreation Park. According to the station authorization, KSKE should have switched from daytime to nighttime power at 8:15 p.m. The agent observed no power level change as required by KSKE's station authorization prior to 9:00 p.m. Subsequent on-air field strength measurements conducted by the agent on May 10, 2001, confirmed that KSKE was operating at the same field strength observed previously on May 9.

¹ 47 C.F.R. § 73.1125(a), 73.1560(a) and 73.1745(a).

4. On May 10, 2001, the agent attempted an inspection of the KSKE main studio located at 0210 Edwards Village Blvd., Unit B-206, Edwards, Colorado. Upon arrival, the agent found what appeared to be storage space. There was no indication that there was a studio at the location. Employees of an adjacent business were not aware of a KSKE studio nearby. The telephone number in the phone book listed for KSKE was disconnected and no alternative phone number was given by directory assistance. During a May 10, 2001, telephone conversation with Pilgrim corporate staff in Indiana, the agent was informed that Pilgrim had no personnel in the Vail area for KSKE. Pilgrim corporate staff advised the agent that Pilgrim staff at station KLMO in Longmont, Colorado, approximately 160 miles away from the location where KSKE's main studio was authorized to be, could provide assistance to the agent and control the KSKE transmitter remotely. The fact that KSKE was operating over its authorized nighttime power level was confirmed when the agent, not noting any change in measured field strength from May 9 to May 10, asked the KLMO operator in Longmont to remotely reduce the KSKE transmitter to its authorized nighttime power level, and the operator did so.

5. On July 30, 2001, the Denver Office issued a NOV to Pilgrim for violations at station KSKE, among them, failing to maintain operations as specified in the station license (Section 73.1745(a)) and failing to maintain a main studio (Section 73.1125). Pilgrim stated in the August 17, 2001, reply to the NOV, that there had been an error in programming the remote power control system, and upon notification by the FCC agent, the programming of the remote power control system was corrected. Pilgrim also stated that a studio was maintained in Edwards, Colorado, that Pilgrim does have an operating telephone number there but Pilgrim did not know why the phone company did not provide the number to the agent, and that Pilgrim has one employee working at KSKE. Although Pilgrim's response indicated that one person was working at the KSKE main studio, that person was not present on the date of the inspection.

III. DISCUSSION

6. Section 503(b) of the Communications Act of 1934, as amended, ("Act"), provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.² The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.³ The term "repeated" means that the violation occurred on more than one day.⁴

7. Section 73.1560(a) of the Rules provides that AM stations must be maintained as near as practicable to the authorized antenna input power and may not be less than 90% nor more than 105% of the authorized power. Section 73.1745(a) of the Rules states that no broadcast station shall operate at times, or with modes or power, other than those specified and made a part of the license unless otherwise permitted by Part 73 of the Rules. On May 9, 2001, Pilgrim station KSKE did not reduce nighttime power as required by the station authorization in violation of Section 73.1560(a) and 73.1745(a) of the Rules.

² 47 U.S.C. § 503(b).

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act..." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁴ Section 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

8. Section 73.1125(a) of the Rules generally requires broadcast stations to maintain a main studio at one of the following locations: (i) within the station's community of license; (ii) at any location within the principal community contour of any AM, FM, TV broadcast station licensed to the station's community of license; or (iii) within twenty-five miles from the reference coordinates of the center of its community of license. The station's main studio must serve the needs and interests of the residents of the station's community of license. To fulfill this function, a station must, among other things, maintain a meaningful management and staff presence at its main studio.⁵ The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.⁶ In addition, there must be "management and staff presence" on a full-time basis during normal business hours to be considered "meaningful." Although management personnel need not be "chained to their desks" during normal business hours, they must "report to work at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a 'home base.'"⁷ On May 9, 2001, Pilgrim had no management or staff presence during normal business hours at the main studios of station KSKE, in violation of Section 73.1125 of the Rules.

9. Based on the evidence before us, we find that Pilgrim apparently exceeded the authorized nighttime power level on May 9, 2001, in willful violation of Section 73.1560(a) and 73.1745(a) of the Rules and failed to maintain the required management and staff presence at KSKE's main studio, in willful and repeated violation of Section 73.1125(a) of the Rules.

10. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),⁸ and Section 1.80 of the Rules,⁹ the base forfeiture amount is \$4,000 for exceeding power limits at nighttime in violation of Sections 73.1560(a) and 73.1745(a) of the Rules;¹⁰ and \$7,000 for failing to maintain the required main studio presence in violation of Section 73.1125(a) of the Rules.¹¹ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act which include the nature, circumstance, extent and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹² Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$11,000 forfeiture is warranted.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act and Section 1.80 of the Rules, Pilgrim Communications, Inc., is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of eleven thousand dollars (\$11,000) for willfully and repeatedly violating Sections 73.1125(a), 73.1560(a) and 73.1745(a) of the Rules at station KSKE.

⁵ See *Main Studio and Program Origination Rules*, 3 FCC Rcd 5024, 5026 (1988).

⁶ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 and n.2 (1992), *clarified*, 7 FCC Rcd 6800 (1992).

⁷ *Jones Eastern of the Outer Banks, Inc.*, 7 FCC Rcd 6800, 6802 (1992).

⁸ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁹ 47 C.F.R. § 1.80.

¹⁰ See, e.g., *Buchanan Broadcasting Company, Inc.*, 15 FCC Rcd 24363 (2000) (upholding a \$4,000 forfeiture for exceeding nighttime power limits).

¹¹ See, e.g., *American Broadcasting Educational Foundation*, 15 FCC Rcd 8630, 8630 (Enf. Bur. 2000) (imposing a \$7,000 forfeiture for violation of the main studio rules).

¹² 47 U.S.C. § 503(b)(2)(D).

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NAL, Pilgrim Communications, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹³

14. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Technical and Public Safety Division and must include NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities ("OCBO") set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by regular mail and certified mail number 7001 0320 0002 9702 9885, return receipt requested, to Pilgrim Communications, Inc., 54 Monument Circle, Suite 250, Indianapolis, Indiana 46204.

FEDERAL COMMUNICATIONS COMMISSION

Leo E. Cirbo
District Director, Denver Office

Enclosure: Attachment A

¹³ See 47 C.F.R. § 1.1914.